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**Subject:** RE: Docket no. 03-RPS-1078 and Docket No.02-REN-1038

April 14, 2004

To: California Energy Commission, Re: Docket no. 03-RPS-1078 and Docket No.02-REN-1038  
From: Ramona Gonzalez, East Bay Municipal Utility District

We have reviewed the Renewable Guidebooks that are to be considered for formal adoption on April 21, 2004, and provide the following comments for your review:

The Renewable Portfolio Standard Eligibility Guidebook (generally speaking only to hydro-generation) has become so specific that, as written, it appears to exclude existing hydro-generation that is not owned or procured by an IOU.

Municipal Utility (water) Districts that own and operate hydro-generation, such as EBMUD, fall into this hydro-generation category and should be eligible to contribute to the Renewable Portfolio Standard (RPS) in California, as we believe the law states.

Below is the trail of statutory language that we followed to conclude that small hydro should be included as an eligible renewable resource.

SB1078: 399.13 states " The Energy Commission shall do all the following: Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (a) of section 399.12, whereas

Subdivision (a) of 399.12 states "Eligible renewable energy resource" means an electric generating facility that is one of the following:

1) The facility meets the definition of "in-state renewable electricity generation technology " in section 383.5, whereas

[NOTE: There is additional language in 399.12 under paragraphs 2), 3) and 4) some of which relates to the concept of "eligible for the purpose of baseline of an electrical corporation", but this should be mutually exclusive from the other criteria, as a resource only needs to satisfy one of the criteria under 399.12 to be eligible.]

Section 383.5 states in section 1:"In-state renewable electricity generation technology" means a facility that meets all of the following:

(A) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

(B) The facility is located in the state or near the border of the state with the first point of connection to the Western Electricity Coordinating Council (WECC) transmission system located within the state.

(C) This last section C relates only to "solid waste conversion" and is not applicable here.

Per this statutory language, all Hydro-generation less than 30 MW located within California meets the requirements of "Eligible renewable energy Resource".

However, the Eligibility requirements (page 4 of the final RPS Eligibility Guidebook) states, "In general, a facility is eligible if it uses an eligible resource or fuel, satisfies resource-specific criteria (why???), and is either located within the state or satisfies applicable requirements for out-of-state facilities.

EBMUD questions the addition of "resource specific criteria", and from what statutory language it is drawn. Moreover, the eligibility language should be clarified to first include all eligible resources that contribute renewable energy to California regardless of who holds title and when it began operation. The Small Hydroelectric breakdown of Pre-September 12, 2002 and Post-September, 2002 categories on pages 11 & 12 are too prescriptive.

EBMUD recommends first clarifying that all in-state Hydro-generation less than 30 MW is eligible, and then identify as a subset under which category these eligible hydro-generators will be able to contribute (i.e., baseline, adjustments to baseline, or Annual Procurement Target).

Thank You,

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